

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1882.

No. 663.

DAVID M. GOODRICH, PLAINTIFF IN ERROR,

vs.
JAMES H. EDWARDS, UNITED STATES COLLECTOR OF
INTERNAL REVENUE FOR THE SECOND DISTRICT OF
THE STATE OF NEW YORK.

APPEAL TO THE DISTRICT COURT OF THE UNITED STATES FOR
THE SOUTHERN DISTRICT OF NEW YORK.

FILED NOVEMBER 21, 1882.

(25,220)

(28,020)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1920.

No. 663.

DAVID M. GOODRICH, PLAINTIFF IN ERROR,

vs.

WILLIAM H. EDWARDS, UNITED STATES COLLECTOR OF
INTERNAL REVENUE FOR THE SECOND DISTRICT OF
THE STATE OF NEW YORK.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR
THE SOUTHERN DISTRICT OF NEW YORK.

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L. 24—46.

*Writ of Error.*UNITED STATES OF AMERICA, *vs.*

The President of the United States of America to the Judges of the District Court of the United States for the Southern District of New York, Greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the District Court, before you, or some of you, between David M. Goodrich, plaintiff-in-error, against William H. Edwards, United States Collector of Internal Revenue for the Second District of the State of New York, defendant-in-error, a manifest error hath happened, to the great damage of the said David M. Goodrich, plaintiff-in-error, as is said and appears by his complaint. We, being willing that such error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, at the City of Washington, together with this writ, so that you have the same at the said place, before the Supreme Court of the United States aforesaid, within thirty days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court of the United States may cause further to be done therein, to correct that error, what of right and according to the law and custom of the United States ought to be done.

Witness, the Honorable Edward D. White, Chief Justice of the United States, this 21st day of December, in the year of our Lord one thousand nine hundred and twenty, and of the Independence of the United States the one hundred and forty-fifth.

[Seal of District Court of the United States, Southern District of N. Y.]

[L. 8.]

ALEX. GILCHRIST, JR.,
Clerk of the District Court of the United
States of America for the Southern Dis-
trict of New York, in the Second Cir-
cuit.

The foregoing writ is hereby allowed.

LEARNED HAND,

U. S. District Judge.

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[Endorsed:] L. 24—46. Supreme Court of the United States. David M. Goodrich, Plaintiff-in-Error, against William H. Edwards, United States Collector of Internal Revenue for

the Second District of the State of New York, Defendant-in-Error. (Original.) Writ of Error. Langdon P. Marvin, Attorneys for Plaintiff-in-error, 52 Wall Street, Borough of Manhattan, New York City. Due Service of a Copy of the within Writ of Error is hereby admitted this — day of — 192—. U. S. District Court, S. D. of N. Y. Filed Dec. 21, 1920.

4 UNITED STATES OF AMERICA,
Southern District of New York, vs:

I, Alex. Gilchrist, Jr., Clerk of the District Court of the United States of America, for the Southern District of New York, in the Second Circuit, by virtue of the foregoing Writ of Error, and in obedience thereto, do hereby certify, that the following pages numbered from 5 to 31 inclusive, contain a true and complete transcript of the record and proceedings had in said Court in the cause of David M. Goodrich, Plaintiff-in-Error, against William H. Edwards, United States Collector of Internal Revenue for the Second District of the State of New York, Defendant-in-Error, as the same remain of record and on file in said office.

In testimony whereof, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, in the Second Circuit, this 21st day of December, in the year of our Lord one thousand nine hundred and twenty and of the Independence of the United States the one hundred and forty-fifth.

[Seal of District Court of the United States, Southern District of N. Y.]

ALEX. GILCHRIST, Jr.,
Clerk.

5 In the United States District Court for the Southern District
of New York.

LS. 24—46.

DAVID M. GOODRICH, Plaintiff,
against

WILLIAM H. EDWARDS, United States Collector of Internal Revenue
for the Second District of the State of New York, Defendant.

Petition for Writ of Error.

To the Supreme Court of the United States of America:

The above named David M. Goodrich now appears before this Court and complains that in the records and proceedings had in this cause, and also in the rendition of the judgment in the above entitled cause, in the United States District Court for the Southern District of New York on the 17th day of December, 1920, manifest error hath

happened to the great damage of said plaintiff, all of which will more in detail appear from the assignment of errors which is filed with this petition.

Wherefore, the said plaintiff hereby prays that a writ of error may issue in his behalf from the Supreme Court of the United States, to the United States District Court for the Southern District of New York, for the correction of the errors and the reversal of the final order and judgment so complained of; that a transcript of the record, proceedings and papers in this cause, duly authenticated, may be sent to the said Supreme Court of the United States; that said writ of error operate as a supersedeas; that the amount of security which

the petitioner shall give on said writ of error may be fixed,
6 and that upon the giving of said security all further proceedings in said Court be suspended and stayed until the determination of said writ of error by the Supreme Court of the United States; and that such other order and process issue as may cause the aforesaid errors and judgment to be corrected by the said Supreme Court of the United States.

Dated, New York City, New York, in said Southern District of New York, the 20th day of December, 1920.

LANGDON P. MARVIN,

Attorney for Plaintiff.

Office and Post Office Address, 52 Wall Street, Borough of Manhattan, New York City.

7 At a Stated Term of the District Court of the United States, Held in and for the Southern District of New York, at the Court House, in the United States Post Office and the Court House Building, in the Borough of Manhattan, City of New York, on the 21st Day of December, 1920.

Present: Hon. Learned Hand, U. S. District Judge.

L. 24—46.

DAVID M. GOODRICH, Plaintiff,

against

WILLIAM H. EDWARDS, United States Collector of Internal Revenue for the Second District of the State of New York, Defendant.

Order Allowing Writ of Error.

The above named plaintiff, David M. Goodrich, having filed a petition for a writ of error and an assignment of errors in the above entitled action, and having also filed a bond in the sum of Two hundred and fifty Dollars (\$250), and the said bond having been duly approved by the Court, it is now

Ordered that a writ of error be and the same hereby is allowed to have reviewed in the Supreme Court of the United States the record and proceedings and the judgment heretofore on the 17th day of

December, 1920, rendered in this Court in this cause; and it is further

Ordered that said bond shall operate as a supersedeas bond.

LEARNED HAND,
U. S. District Judge.

Endorsed: U. S. District Court, S. D. of N. Y. Filed Dec. 21, 1920.

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Summons—Law.

United States District Court for the Southern District of New York.

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DAVID M. GOODRICH

against

WILLIAM H. EDWARDS, United States Collector of Internal Revenue
for the Second District of New York.

To the above-named Defendant:

You are hereby summoned to answer the complaint in this action, and to serve a copy of your answer on the plaintiff's attorney within twenty days after the service of this summons, exclusive of the day of service; and in case of your failure to appear, or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Witness, the Hon. Learned Hand, Judge of the District Court of the United States for the Southern District of New York, at the City of New York, this 16 day of Decr. in the year one thousand nine hundred and twenty.

[SEAL.]

ALEX. GILCHRIST, Jr., Clerk.

EMMET, MARVIN & ROOSEVELT,
Plaintiff's Attorneys.

Office and Post Office Address, 52 Wall Street, Borough of Manhattan, New York City.

Endorsed: U. S. District Court, S. D. of N. Y. Filed Dec. 17, 1920.

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U. S. District Court, Southern District of New York.

L. 24/46.

DAVID M. GOODRICH

versus

WM. H. EDWARDS, Coll'r of Int. Rev., 2nd Dist. of N. Y.

Notice of Appearance and Demand.

You will please take notice that I am retained by, and appear as attorney for, the Defendant in this action, and demand service of all

papers in this action upon me, at my office in the United States Court and Post Office Building, in the City of New York, Borough of Manhattan.

Yours,

EARL B. BARNES,
Asst. United States Attorney,
Attorney for Defendant.

New York, December 17, 1920.

To Emmet, Marvin & Roosevelt, 52 Wall St., Attorney- for Plaintiff.

10 [Endorsed:] U. S. District Court, Southern District of New York. David M. Goodrich versus Wm. H. Edwards, Coll'r of Int. Rev., &c. Notice of Appearance. Earl B. Barnes, Asst. United States Attorney, Attorney for Defendant. Due service of a copy of the within Notice is hereby admitted. Dated the 17th day of Dec. 1920. To Emmet, Marvin & Roosevelt, Plaintiff's Attorneys, 52 Wall St.

11 In the United States District Court for the Southern District of New York.

L. 24—46.

DAVID M. GOODRICH, Plaintiff,
against

WILLIAM H. EDWARDS, United States Collector of Internal Revenue for the Second District of the State of New York, Defendant.

The plaintiff herein, by Emmet, Marvin & Roosevelt, his attorneys, for his complaint against the defendant alleges as follows:

I. The plaintiff at all the times hereinafter mentioned was and now is a citizen of the United States and a resident of the State of New York, and his place of business was and now is situated in the Borough of Manhattan, City, County and State of New York in the Second Internal Revenue District for the State of New York.

II. The defendant at all the times hereinafter mentioned was and now is a resident of the City, County and State of New York in said Second Internal Revenue District and was and now is the duly appointed and qualified United States Collector of Internal Revenue for said district.

III. The plaintiff was not at any of the times hereinafter mentioned and is not now in any sense engaged in the business of buying or selling stocks, bonds or other securities.

IV. Within the period required by law the plaintiff duly filed with the defendant the return required by law of his income for the year 1916, pursuant to the provisions of Title I of the Revenue Act of Congress in effect September 9, 1916, entitled "An Act to Increase the Revenue and for other pur-

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poses," and on the 10th day of May, 1917, the plaintiff pursuant to such return and to such act paid the amount of his income tax for the year 1916 as shown by said return, to the defendant, amounting to the sum of \$2,148.26.

V. Thereafter the Commissioner of Internal Revenue, claiming to act pursuant to the provisions of said Revenue Act, re-examined the plaintiff's said return and assessed against the plaintiff an additional income tax for the year 1916; and thereafter by a notice and demand for tax dated May 6, 1920, the defendant demanded from the plaintiff the payment of said additional tax in accordance with said re-examination and assessment made by said Commissioner. In said notice and demand served by the defendant upon the plaintiff, demand was made for the payment of said additional tax on or before the 17th day of May, 1920, and it was stated that "failure to do so will cause a 5% penalty to accrue, with interest at 1% per month from due date until paid."

VI. Thereafter, the plaintiff, forced to act on or before said 17th day of May, 1920, and solely in order to avoid the payment of the penalty and interest specified in said notice and demand and the attachment of his property, on the 15th day of May, 1920, paid to the defendant under protest the sum of \$3,490.87 on account of said additional income tax for the year 1916 so assessed and demanded as aforesaid.

VII. Thereafter, on or about the 6th day of August, 1920, the plaintiff filed with the defendant herein and with said Commissioner of Internal Revenue his appeal and application for a refund of said sum of \$3,490.87 so paid under protest, said appeal and application for refund being in the manner and form as provided in Sections 3220, 3226 and 3228 of the Revised Statutes of the United States, the provisions of law in that regard and the regulations of the Secretary of the Treasury pursuant to said law; and said appeal and application for refund was thereafter, on or about the 26th day of October, 1920, rejected and denied by said Commissioner of Internal Revenue and notice thereof given by him by letter to the plaintiff, excepting that said Commissioner in correction of an error reduced the total tax assessed against the plaintiff as aforesaid by the sum of \$167.70, but said amount is not involved in this suit.

VIII. That portion of said additional income tax on account of which the sum of \$3,145.91 (part of said sum of \$3,490.87) was paid under protest by the plaintiff as aforesaid was based by said Commissioner of Internal Revenue solely on alleged income in the form of profits, amounting in all to \$120,710.75, alleged by said Commissioner to have been derived by the plaintiff from the sale in 1916 of 3,600 shares of the common stock of the B. F. Goodrich Company, a New York corporation. That portion of said additional income tax on account of which the sum of \$344.96 (the remainder of said sum of \$3,490.87) was paid under protest by plaintiff as aforesaid was based by said Commissioner solely on

alleged income in the form of profits amounting in all to \$13,236.22 alleged by said Commissioner to have been derived by the plaintiff from the sale in 1916 of 1,000 shares of stock of the United Verde Extension Mining Co.

IX. The facts with respect to said common stock of said B. F. Goodrich Company so sold as aforesaid are as follows:

1. On or about the 3rd day of August, 1888, the plaintiff's father, B. F. Goodrich, died, being then the owner of several thousand shares of the capital stock of the B. F. Goodrich Company, a corporation then organized under the laws of the State of Ohio.

14 By his will said decedent gave said stock of said company to his widow, the plaintiff's mother, who held the same for many years thereafter as a permanent investment. During her lifetime the plaintiff's said mother gave to the plaintiff certain shares of stock of said company, and on her death, on or about the 15th day of April, 1907, she bequeathed by her will other shares of stock of said company to the plaintiff. The plaintiff continued to own and to hold the said shares of stock of said company so acquired by him by gift from and under the will of his mother until on or about the 11th day of May, 1912, when a reorganization of said corporation occurred and the business and assets of said corporation organized under the laws of the State of Ohio were transferred to a new corporation by the same name, that is, the B. F. Goodrich Company, organized under the laws of the State of New York. Under the plan of reorganization the plaintiff exchanged his shares of stock so acquired by him, for cash and common stock of said new corporation, the B. F. Goodrich Company, organized under the laws of the State of New York, as of said 11th day of May, 1912, receiving certificates for the stock of said new New York corporation issued to him as of that date shortly thereafter. On said 11th day of May, 1912, the date when the plaintiff so acquired said common stock of said B. F. Goodrich Company, the New York corporation, shares of said stock were sold on the New York Curb Exchange, a public exchange in the City of New York, to be delivered as and when issued, at a price of about \$81. a share, and plaintiff alleges that this was the fair market value of said stock on that date.

2. During the year 1916 the plaintiff sold 3,600 shares of said common stock of said B. F. Goodrich Company, the New York corporation, so acquired by him on said reorganization, as follows:

15	Date of sale.	Number of shares.	Cash received.
February	21.....	100	\$7,283.50
"	23.....	100	7,283.50
"	23.....	150	10,756.50
"	23.....	200	14,267.00
"	23.....	50	3,560.50
"	23.....	100	7,108.50
March	17.....	1,000	74,835.00
April	13.....	450	39,925.75
May	29.....	50	3,791.75
May	29.....	250	18,958.75
"	29.....	50	3,798.00
"	29.....	250	18,958.75
"	29.....	400	30,334.00
July	8.....	450	32,484.75
Total		3,600	\$269,346.25

3. On the 1st day of March, 1913, certain shares of the common stock of said B. F. Goodrich Company, the New York corporation, were sold on the New York Stock Exchange in the City of New York, a public exchange, at an average price of about \$41.25 a share. Said Commissioner of Internal Revenue found this price of about \$41.25 per share to be the fair market value of said common stock of said B. F. Goodrich Company, the New York corporation, on said 1st day of March, 1913, and, therefore, determined the total fair market value on said date of said 3,600 shares to be \$148,635.50.

4. Said portion, amounting to \$3,145.91, of the additional income tax, so assessed against the plaintiff and so paid by him under protest as aforesaid, was based by said Commissioner of Internal Revenue solely on the difference between the sum received by the plaintiff from the sale of said 3,600 shares of said common stock of said B. F. Goodrich Company, the New York corporation, amounting to \$269,346.25, and the market value as found by the said Commissioner of Internal Revenue of said 3,600 shares of said stock on the 1st day of March, 1913, amounting to \$148,635.50, the difference between said sums, amounting to \$120,710.75, being found to be taxable income by said Commissioner.

16 5. The fair market value or price of said common stock of said B. F. Goodrich Company, the New York corporation, when it was acquired as aforesaid by the plaintiff on the 11th day of May, 1912, was the sum of \$81. a share, and the total fair market value or price, on said date, therefore, of said 3,600 shares of said stock so sold by the plaintiff as aforesaid in the year 1912 was the sum of \$291,600, whereas the total price received for said 3,600 shares when sold by the plaintiff in the year 1916, as aforesaid, was the sum of \$269,346.25. In the year 1916, therefore, the plaintiff received for the shares of stock so sold the sum of \$22,-

253.75 less than their aggregate fair market value at the date on which he acquired them.

X. The facts with respect to the sale of the shares of stock of the United Verde Extension Mining Company are as follows:

1. During the year 1912 the plaintiff subscribed for and bought for investment 1,000 shares of the capital stock of the United Verde Extension Mining Company and paid therefor the sum of 50¢ per share, or a total sum of \$500 for said 1,000 shares.

2. On the 7th day of March, 1916, the plaintiff sold said 1,000 shares of stock of said United Verde Extension Mining Co. for the sum of \$13,931.22.

3. On the 1st day of March, 1913, certain shares of the stock of said United Verde Extension Mining Company were sold on the New York Stock Exchange in the City of New York, a public exchange, at an average price of 69½¢ a share. Said Commissioner of Internal Revenue found this price of 69½¢ per share to be the fair market value of said stock of the United Verde Extension Mining Company on said 1st day of March, 1913, and therefore, found the total fair market value on said date of said 1,000 shares to be \$695.

4. Said portion, amounting to \$344.96, of the additional income tax, so assessed against the plaintiff and so paid by him under protest as aforesaid, was based by said Commissioner of Internal Revenue solely on the difference between the sum received by the plaintiff from the sale of said 1,000 shares of stock of said United Verde Extension Mining Company, amounting to \$13,931.22, and said market value as found by the said Commissioner of Internal Revenue of said 1,000 shares, on the 1st day of March, 1913, amounting to \$695, the difference between said sums, amounting to \$13,236.22, being found to be taxable income by said Commissioner.

XI. As a conclusion of law, the plaintiff alleges with respect to the sales of securities hereinbefore set forth, that the alleged profits against which the Commissioner of Internal Revenue assessed and collected the additional income tax for said year 1916, the recovery of which is sought in this action, represent solely increase or increment of capital value of the aforesaid securities realized on the sale thereof over and above the fair market value thereof on the 1st day of March, 1913, and do not represent in any other respect income of the plaintiff for said year 1916; that said sums against which said additional income taxes have been assessed as aforesaid were in their inherent nature capital as distinguished from income, being the realization of the growth or increment in value of said securities while owned by the plaintiff and held by him as an investment; that no income tax is imposed by said Revenue Act of 1916 or by any other applicable act properly construed, upon any part of the amounts derived, as aforesaid, by the plaintiff from

18 any of the aforesaid sales of stock, and no income tax can legally or constitutionally be assessed against such alleged profits or increase or increment of capital value, or any of them.

XII. As a conclusion of law, and for the purpose of preserving his claim that a constitutional question is involved in this suit, and of protecting his right to a direct appeal to or writ of error from the Supreme Court of the United States by reason thereof, in case said appeal or writ shall be necessary, the plaintiff further alleges that said Revenue Act of 1916 insofar as it has been or may be construed and enforced as authorizing the assessment and collection of any income or other tax upon the increase or increment in capital value realized upon the sale of the aforesaid securities, is invalid, unconstitutional and void, and in violation of the rights secured to the plaintiff by the Constitution of the United States, and more particularly by Article I, Section 2, Clause 3 thereof to the effect that "direct taxes shall be apportioned among the several States," and of Article I, Section 9, Clause 4 thereof, to the effect that "No capitation or other direct tax shall be laid unless in proportion to the census or enumeration hereinbefore directed to be taken," that said alleged profits or increase or increment of capital value of said securities did not in whole or in any part or portion thereof constitute income and were not subject to tax as income within the meaning of the Sixteenth Amendment to the Constitution of the United States, which provides that "Congress shall have power to lay and collect taxes on incomes from whatever source derived without apportionment among the several States and without regard to any census or enumeration" and that said Revenue Act of 1916, insofar as it has been or may be construed and enforced, as aforesaid, is not authorized by said Sixteenth Amendment.

19 XIII. This is a suit of a civil nature at common law arising under the Constitution and Laws of the United States, and under such laws providing for internal revenue.

Wherefore, the plaintiff demands judgment against the defendant for the sum of Three thousand four hundred ninety and 87/100 Dollars (\$3,490.87), together with interest thereon from the 15th day of May, 1920, and the costs and disbursements of this action, and such other relief as to the court may seem just.

EMMET, MARVIN & ROOSEVELT,
Attorneys for Plaintiff.

Office and Post Office Address, 52 Wall Street, Borough of Manhattan, City of New York.

20 UNITED STATES OF AMERICA,
State of New York, County of New York, ss:

David M. Goodrich, being duly sworn, deposes and says that he has read the foregoing complaint and knows the contents thereof, and that the same is true to his own knowledge except as to the matters therein stated to be alleged on information and belief, and that as to those matters he believes it to be true.

DAVID M. GOODRICH.

Sworn to before me this 15th day of December, 1920.

[SEAL.]

H. N. JASPER,

Notary Public, Westchester County.

Certificate filed in New York County No. 70.

Commission expires March 30, 1921.

(Endorsed:) U. S. District Court, S. D. of N. Y. Filed Dec. 16, 1920.

21 *Demurrer.*

United States District Court, Southern District of New York.

L. 24/46.

DAVID M. GOODRICH, Plaintiff,

against

WILLIAM H. EDWARDS, United States Collector of Internal Revenue for the Second District of the State of New York, Defendant.

The defendant, above-named, by Earl B. Barnes, Assistant United States Attorney for the Southern District of New York, his attorney, demurs to the complaint herein on the ground that the same does not state facts sufficient to constitute a cause of action.

Wherefore, defendant demands judgment, dismissing said complaint, together with the costs and disbursements of this action.

EARL B. BARNES,

*Assistant United States Attorney,
Southern District of New York,
Attorney for Defendant.*

Office & P. O. Address: U. S. Courts & P. O. Bldg., Borough of Manhattan, City of New York.

(Endorsed:) U. S. District Court, S. D. of N. Y. Filed Dec. 17, 1920.

22 At a stated Term of the United States District Court for the Southern District of New York Held in the United States Court, in the Post Office Building, on the 17th Day of December, 1920.

Present: Hon. Learned Hand, United States District Judge.

L. 24/46.

DAVID M. GOODRICH, Plaintiff,

against

WILLIAM H. EDWARDS, United States Collector of Internal Revenue for the Second District of the State of New York, Defendant.

Order Sustaining Demurrer.

The issues of law raised by the demurrer of the defendant to the complaint of the plaintiff herein having duly come on to be heard by this Court at a Stated Term thereof, on the 17th day of December, 1920, after hearing Richard S. Holmes, Esq., Assistant United States Attorney, of counsel for the defendant in support of said demurrer, and Langdon P. Marvin, Esq., attorney and of counsel for the plaintiff, in opposition thereto, and due deliberation having been had thereon,

Now, upon motion of Earl B. Barnes, Esq., Assistant United States Attorney for the Southern District of New York and attorney for the defendant, it is

Ordered, that the said demurrer be and the same hereby is in all respects sustained; and it is further

Ordered, that the complaint herein be and the same hereby is dismissed; and it is further

23 Ordered, that the defendant have final judgment against the plaintiff and for his costs to be taxed.

LEARNED HAND,
United States District Judge.

(Endorsed:) U. S. District Court, S. D. of N. Y. Filed Dec. 17, 1920.

24 United States District Court, Southern District of New York.

L. 24—46.

DAVID M. GOODRICH, Plaintiff,

against

WILLIAM H. EDWARDS, United States Collector of Internal Revenue
for the Second District of the State of New York, Defendant.

Final Judgment of Dismissal.

The issues of law raised by the demurrer of the defendant to the complaint of the plaintiff herein having duly come on to be heard before the Honorable Learned Hand, United States District Judge, at a Stated Term of this Court, and after hearing Richard S. Holmes, Esq., Assistant United States Attorney, of counsel for the defendant, in support of said demurrer, and Langdon P. Marvin, Esq., attorney and of counsel for the plaintiff, in opposition thereto, and due deliberation having been had thereon and an order having been duly entered on the 17th day of December, 1920, sustaining the said demurrer to the said complaint of the plaintiff herein and ordering that the said complaint herein be dismissed and further ordering that the defendant have final judgment against the plaintiff, and the defendant's costs having been taxed at the sum of \$19.40.

Now, on motion of Earl B. Barnes, Esq., Assistant United States Attorney for the Southern District of New York, attorney for the defendant, it is hereby

25 Adjudged and decreed that the defendant, William H. Edwards, United States Collector of Internal Revenue for the Southern District of the State of New York, have final judgment against the plaintiff, David M. Goodrich, dismissing the complaint herein and that the said defendant recover of the said plaintiff the sum of nineteen & 40/100 Dollars (\$19.40) costs as taxed, and that execution issue therefor.

Judgment signed this 17th day of December, 1920.

ALEX. GILCHRIST, JR.,
Clerk.

U. S. District Court, S. D. of N. Y. Filed Dec. 17, 1920.

26 United States District Court, Southern District of New York.

L. 24—46.

DAVID M. GOODRICH, Plaintiff,

against

WILLIAM H. EDWARDS, United States Collector of Internal Revenue
for the Second District of the State of New York, Defendant.

Assignment of Errors.

The plaintiff above named hereby assigns error to the record and proceedings and to the judgment entered in the above entitled cause, as follows:

I. The Court erred in sustaining the demurrer to the complaint herein.

II. The Court erred in holding that the differences realized on the sales of the securities in the year 1916 over their fair market value on the 1st day of March, 1913, as set forth in the complaint, being profits or increase or increment of capital value, were taxable as income within the intent and meaning of the Revenue Act of 1916 or of any other applicable act.

III. The Court erred in holding that the difference realized on sales of stock of the B. F. Goodrich Company in the year 1916 over their fair market value on the 1st day of March, 1913, as set forth in the complaint herein, were taxable within the intent and meaning of the Revenue Act of 1916, or of any other applicable act, for the reason that no profits or increase or increment of capital value, or income of any kind were received by the plaintiff, but on the contrary, actual losses suffered by him, on all of such sales with relation
27 to the fair market value of said stock when acquired by him.

IV. The Court erred in holding that the tax assessed as alleged in the complaint, and the Revenue Act of 1916, and any other applicable act, in so far as the same have been or may be construed or enforced as imposing said tax, were not unconstitutional and void and in violation of Article I, Section 2, Clause 3 of the Constitution of the United States as a direct tax not apportioned among the several states.

V. The Court erred in holding that the tax assessed as alleged in the complaint, and the Revenue Act of 1916 and any other applicable act, in so far as the same have been or may be construed or enforced as imposing said tax, were not unconstitutional and void and in violation of Article I, Section 9, Clause 4 of the Constitution of the United States as a direct tax not laid in proportion to the census or enumeration therein mentioned.

VI. The Court erred in holding that the tax alleged in the complaint was a tax on income within the meaning of the Revenue Act of 1916 or of any other applicable act.

VII. The Court erred in holding that the growth or increment of value in property held for investment, when realized by the sale of such property, is taxable as income under the Revenue Act of 1916 or under any other applicable act.

VIII. The Court erred in holding that the tax alleged in the complaint was a tax on incomes within the meaning of the Sixteenth Amendment to the Constitution of the United States.

IX. The Court erred in holding that the growth or increment of value in property held for investment, when realized by the sale of such property, is income within the meaning of the word "incomes" as set forth in the Sixteenth Amendment to the Constitution of the United States.

28 X. The Court erred in holding that the Revenue Act of 1916, or any other applicable act, in so far as the same has been or may be construed and enforced as imposing a tax as set forth in the complaint, is authorized by the Sixteenth Amendment to the Constitution of the United States.

Dated, New York City, the 20th day of December, 1920.

LANGDON P. MARVIN,

Attorney for Plaintiff.

Office and Post Office Address, 52 Wall Street, Borough of Manhattan, City of New York.

(Endorsed:) U. S. District Court, S. D. of N. Y. Filed Dec. 21, 1920.

29 Bond of United States Fidelity and Guaranty Co. for \$250. approved Learned Hand, J., filed December 21, 1920.

30 L. 24—46.

Citation on Appeal.

By the Honorable Learned Hand, one of the Judges of the District Court of the United States for the Southern District of New York, in the Second Circuit, to William H. Edwards, United States Collector of Internal Revenue for the Second District of the State of New York, Greeting:

You are hereby cited and admonished to be and appear before the United States Supreme Court, to be holden at the City of Washington, within thirty days from the date hereof, pursuant to a writ of error filed in the Clerk's Office of the District Court of the United States for the Southern District of New York, wherein David M. Goodrich is plaintiff-in-error and you are defendant-in-

error, to show cause, if any there be, why the proceedings and judgment in said writ of error mentioned should not be corrected and speedy justice should not be done in that behalf.

Given under my hand at the Borough of Manhattan, in the City of New York, in the District and Circuit above named, this 21st day of December, in the year of our Lord One Thousand Nine Hundred and Twenty, and of the Independence of the United States the One Hundred and Forty-fifth.

LEARNED HAND,

*Judge of the District Court of the
United States for the Southern
District of New York, in the
Second Circuit.*

31 [Endorsed:] L. 24—46. Supreme Court of the United States. David M. Goodrich, Plaintiff-in-Error, against William H. Edwards, United States Collector of Internal Revenue for the Second District of the State of New York, Defendant-in-Error. (Original.) Citation. Langdon P. Marvin, Attorney for Plaintiff-in-Error, 52 Wall Street, Borough of Manhattan, New York City. Due Service of a Copy of the within citation is hereby admitted this — day of —, 192—. —, Attorney for Appellee. U. S. District Court, S. D. of N. Y. Filed Dec. 21, 1920. A copy of the within paper has been this day received at this office, Dec. 21, 1920. Francis G. Caffey, U. S. Attorney.

32 [Endorsed:] District Court of the United States for the Southern District of New York. David M. Goodrich, Plaintiff-in-error, against William H. Edwards, United States Collector of Internal Revenue, etc., Defendant-in-error. Transcript of Record on Appeal.

Endorsed on cover: File No. 28,020. S. New York, D. C. U. S. Term No. 663. David M. Goodrich, plaintiff-in-error, vs. William H. Edwards, United States Collector of Internal Revenue for the Second District of the State of New York. Filed December 23d, 1920. File No. 28,020.